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OFFICE OF PETITIONS

In re Application of	:	
Lamoy et al.	:	DECISION ON PETITION
Application No. 10/021,682	:	TO WITHDRAW HOLDING OF
Filed: 30 November, 2001	:	ABANDONMENT
Atty. Docket No. NC 79363A	:	

This is a decision on the petition, filed on 18 January, 2005, to withdraw the holding of abandonment in the above-identified application.

The Office apologizes for the delay in responding to the present petition.

The application was held abandoned for failure to respond in a timely manner to the Board of Patent Appeals and Interferences Decision affirming the Examiner ("Board decision") mailed on 31 August, 2004, which set a two (2) month period for reply. Notice of Abandonment was mailed on 18 November, 2004.

Petitioners assert that a proper response was in fact timely filed in the form of a Request for Statutory Invention Registration (SIR). In support of the petition, petitioners have supplied a copy of the SIR Request, the transmittal letter accompanying the request, and a copy of a date-stamped post card receipt acknowledging receipt of the transmittal letter and SIR Request in the USPTO. The postcard bears an "Office-date" stamp of 1 November, 2004

The SIR request and transmittal letter of are not of record in the file and cannot be located. However, M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that

the SIR request and transmittal letter were received in the Office but was not matched with the application file.

The date-stamped on the post card of 1 November, 2004, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The transmittal letter filed with the present petition itemizes the filing of the SIR and bears a proper certificate of mailing, dated 28 October, 2004, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application will be forwarded to the Center's technical support staff for entry of the response. Thereafter the SIR request will be examined in due course.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions